



Appeal of Richard E. and Geraldine Goodman

The sole issue is whether appellants owe interest upon the amount of the deficiency assessment of California personal income tax for 1976.

In September 1973, the Internal Revenue Service completed its audit of appellants' 1976 federal income tax return. The final federal audit report determined that appellants' taxable income for federal income tax purposes was \$3,073 higher than the taxable income reported by appellants on their federal return for that year. The Internal Revenue Service supplied respondent with a copy of the federal audit report, as authorized by section 6103(d) of the Internal Revenue Code of 1954. Respondent revised appellants' reported California personal income tax liability for 1976 based upon the adjustments to taxable income in the federal audit report. On March 20, 1981, respondent issued a notice of proposed assessment of tax in the amount of \$362.91 plus interest. Appellants protested respondent's assessment which, after further review, was affirmed on August 13, 1981. This appeal followed.

After exchanges of correspondence and telephone conversations subsequent to the filing of this appeal, appellants agreed that the proposed amount of additional tax was correct and paid that amount on January 25, 1982.

Appellants still object to any charge for interest on the ground that the respondent's notice of proposed additional tax was not sent to them until March 20, 1981, a year and a half after the federal audit was completed. Appellants also object to any charge for interest for the period in which respondent had not offered them an understandable explanation why the changes in the computation of their taxable income for California purposes were not in amounts identical to the changes for federal purposes when the California adjustments were based on the federal determination. Appellants maintain that no interest could accrue until a satisfactory resolution of their appeal was reached.

Section 18586 of the Revenue and Taxation Code, the relevant statute of limitations for the proposed assessment, provides (with certain exceptions) that every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. Section 18588 of the Revenue and Taxation Code provides that for the purposes of section 18586 (and certain other sections), 'any returns actually filed

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before the last day prescribed by law for filing shall be deemed to have been filed on that last day. **Thus**, timely returns for the calendar year 1976 are deemed to have been filed on April 15, 1977, for the purposes of determining the four-year period within which a deficiency determination shall be mailed pursuant to section 18586. Accordingly, the notice of proposed deficiency assessment contemplated by section 18586 for that calendar year must have been mailed on or before April 15, 1981. **The** notice of proposed deficiency assessment in this case was mailed on or before March 20, 1981, and so was timely under the relevant provisions of the statute.

Appellants have simply stated their own opinion that respondent's notice of proposed assessment was mailed later than it should have been, but they cite no reason or authority why in this case the statutory period is illegally long.

Section 18688 of the Revenue and Taxation Code, as it existed prior to its amendment in 1982, provided:

Interest upon the amount assessed as a deficiency shall be assessed, collected and paid in the same manner as the tax at the rate of 6 percent per year from the date prescribed for the payment of the tax until the date the tax is paid. If any portion of the deficiency is paid prior to the date it is assessed, interest shall accrue on such portion only to the date paid. However, the rate shall be 12 percent per year instead of 6 percent per year with respect to interest payable on unpaid amounts which are delinquent more than one year.

**Thus**, the interest must be computed, pursuant to the statute, from the time the tax was due, April 15, 1977. The interest may not, alternatively, be computed from the time the taxpayers agree with, or at least understand, the basis upon which the respondent later computed the understatement of tax. **This** board has consistently held that the imposition of interest upon a deficiency is mandatory under section 18688. (Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.) Furthermore, interest is not a penalty; rather it is simply compensation for the use of money. (See Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976;

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Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal.,  
Aug. 1, 1974.)

We have no alternative but to sustain respondent's assessment of interest in the amount of \$182.62.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Richard E. and Geraldine Goodman against a proposed assessment of additional personal income tax and interest in the amounts of \$362.91 and \$182.62, respectively, for the year 1976, be and the same is hereby sustained with appellants receiving credit for payment of the \$362.91 proposed assessment of additional personal income tax.

Done at Sacramento, California, this 10th day of October, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member

\*For Kenneth Cory, per Government Code section 7.9